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9
 10 IN THE UNITED STATES DISTRICT COURT
 11
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 CIRRUS EXPLORATORY SITES, L.P., a
 14 Texas limited partnership.,

15 Plaintiff,

16 v.

17 FIRST AMERICAN CORPORATION, a
 18 California Corporation, dba FIRST
 19 AMERICAN TITLE INSURANCE
 20 COMPANY; HORTON-SHIPNUCK
 21 LIVING TRUST under agreement dated
 22 July 18, 2000, a California trust, DAVID E.
 23 SHIPNUCK, trustee, of the HORTON-
 24 SHIPNUCK LIVING TRUST; LESLIE K.
 25 SHIPNUCK, an individual; and Does 1
 26 through 25, inclusive.,

27 Defendants.

28 Case No.: 3:07-cv-6459

29
**ANSWER TO UNVERIFIED
 30 COMPLAINT.**

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 32 Judge Phyllis J. Hamilton

33
 34 Complaint Filed: 12/26/2007

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 36 Defendants DAVID E. SHIPNUCK and LESLIE K. SHIPNUCK (“Defendants”) file this
 37 Answer to the Complaint of Plaintiff, CIRRUS EXPLORATORY SITES, L.P, as follows:

38 1. Defendants generally deny each and every allegation of Plaintiff’s unverified
 39 complaint.

40
AFFIRMATIVE DEFENSES

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FIRST AFFIRMATIVE DEFENSE

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 43 Neither Plaintiff’s Complaint nor any of its individual causes of action states a
 44 claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

An absent person is necessary to the action. Further, that necessary person cannot be joined, and that party is indispensable, requiring that, in equity and good conscience, the action be dismissed.

THIRD AFFIRMATIVE DEFENSE

The parties to the action lack diversity of citizenship.

FOURTH AFFIRMATIVE DEFENSE

Venue in the current judicial district is improper.

FIFTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations, Defendant asserts that defense.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's claims were already litigated and/or resolved in any prior proceeding, Plaintiff's claims in this action are barred by reason of the primary right, res judicata, and/or collateral estoppel doctrines. To the extent that Plaintiff have entered into waivers or releases of any of the claims she purports to assert in this action, those claims are barred by those waivers or releases.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff failed or refused to make reasonable efforts to mitigate, minimize or avoid their alleged damages, their claims for damages are barred, either in whole or in part.

EIGHTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's claims and/or damages, and/or the claims and/or damages of any purported class member, are barred by the doctrines of waiver, estoppel, unclean hands, and/or laches, Defendant asserts those defenses.

NINTH AFFIRMATIVE DEFENSE

Any award to Plaintiff in this action would constitute unjust enrichment.

TENTH AFFIRMATIVE DEFENSE

1 Plaintiff has not stated a claim upon which declaratory or injunctive relief may be
2 granted.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 This Court constitutes an inconvenient forum in which to hear this action, and this
5 action should be dismissed or transferred for the convenience of the parties and witnesses, and in
6 the interests of justice, pursuant to the doctrine of *forum non conveniens* or 28 U.S.C. §1404.

7 **PRAYER**

8 Therefore, Defendant respectfully requests that the court:

- 9 1. Enter judgment that the Plaintiff take nothing by its complaint;
10 2. Award Defendant costs incurred in defending against this action; and
11 3. Award Defendant any other relief to which Defendant is entitled.

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13 DATED: Wednesday, March 26, 2008

14 _____/S/ _____
15 John A. Kelly, Esq.
16 Attorney for Leslie Shipnuck and David Shipnuck.
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